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Mrs. Deborah Schulte

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● (1535)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): If I could, please, I'd like to get the meeting started.

We have very important votes tonight, so it's going to affect our meeting because we have two panels. We want to make sure both panels have a chance to get our full attention.

I'd like to welcome our guests. Thank you very much for being here.

We have Ecojustice Canada, Joshua Ginsberg, barrister and solicitor; the Grand Council of the Crees, Bill Namagoose, executive director, and Jean-Sébastien Clément, partner; Mining Watch Canada, Jamie Kneen, communications and outreach coordinator; and West Coast Environmental Law Association, Anna Johnston, staff lawyer.

Some of you have been before us before, so we welcome you back. To those who are new, welcome. We have a couple of procedural things before I open the floor to you. Just because I do not like to interrupt people, I will put up the yellow card when you've got a minute left in your presentation. I do the same thing to the members, so they're getting used to it. I put up the red card when your time is over. I don't mean for you to stop in mid-sentence; just wrap up what you're saying quite quickly because we've run out of time. Hopefully that will be helpful to you.

Who would like to start?

We'll start with you, Joshua, thank you very much.

Mr. Joshua Ginsberg (Barrister and Solicitor, Ecojustice Canada): Thank you very much, Madam Chair and committee members, for inviting Ecojustice to provide suggestions to the committee on Bill C-69.

Ecojustice is a national environmental law charity providing free legal services to Canadian conservation groups, concerned citizens, and first nations. Lawyers from Ecojustice appear across the country before courts and tribunals at every level, including with respect to environmental assessment, which will be the focus of my comments today.

I am an Ecojustice litigator and a part-time professor at the University of Ottawa faculty of law and director of Ecojustice's environmental law clinic at the faculty, where I teach environmental litigation, including with respect to environmental assessments. My comments today are informed by those various hats.

The points I propose to focus on are the following: first, the discretion to exempt projects from an assessment; second, the importance of clear requirements for decision-making; third, environmental justice; fourth, assessments of federal projects; and finally, review and appeal.

I've submitted a brief touching on other aspects of the proposed IAA as well as the proposed energy regulator act and the navigable waters act, which I commend for your review.

One of the most consequential effects when the 2012 legislation replaced the previous Canadian Environmental Assessment Act was the shift from a triggers-based approach to a project list approach, which limited potential assessments to a short list of major projects under federal jurisdiction. CEAA 2012 reduced the number of project assessments to dozens annually, compared with the former legislation that applied to thousands of projects annually. Even then, the 2012 act added an off-ramp whereby the agency could exempt projects from assessment. That discretion has been used 27 times since the current act came into force, or about five times per year. It is a regular part of agency operations.

Here are just two examples of exempted projects as a result of that discretion: a gold mine located near Timmins, Ontario, with an ore production capacity of 4,000 tonnes per day, where the minimum production capacity to trigger a federal assessment is only 600 tonnes per day; and a crude oil storage facility with capacity for 6.64 million barrels just outside the municipal border of Edmonton, Alberta.

The proposed IAA does not remedy this exclusion problem. It retains the discretion to exempt projects from a list that will likely only include those with the most potential for adverse effects in an area of federal jurisdiction, according to the government discussion paper on the subject. To be clear, I am not suggesting that any particular project ought not to have been approved. However, projects make the list because they have real potential for adverse effects, like toxic heavy industry in proximity to communities, like the two I mentioned. Failing to assess those projects undermines public trust in the process. Communities should get a full picture of the potential adverse effects of the project and ways the project might be improved. Not assessing such projects also undermines efforts to tackle cumulative effects, which is a core purpose of the bill.

We, therefore, recommend that section 16 of the act be amended to allow the agency to exempt a designated project from assessment only if it determines that there is no potential for impacts on areas within federal jurisdiction. In other words, if the presumption of federal jurisdiction that led a project to end up on the list in the first place is rebutted, it doesn't need an assessment. Otherwise, an assessment ought to take place.

The lack of clear criteria in the existing legislation has resulted in an interpretation by the courts that decision-making on assessments is based on nearly unfettered discretion. The assessment report is merely one input in an indeterminate sea of considerations that are never made public. The law is so vague that the Federal Court of Appeal concluded that decisions are, "based on the widest considerations of policy and public interest assessed on the basis of polycentric, subjective, or indistinct criteria". In other words, after all of the evidence and public participation that goes into an assessment, there's no guarantee that it will do anything to influence the final decision.

What's more, courts have doubted whether the law imposes any standards for the content of the assessment report. According to some jurisprudence, it is doubtful whether the report is even required to contain substantive consideration of environmental effects, even serious ones like the release of liquid effluent from a nuclear reactor into Lake Ontario. The prevailing standard is "some consideration," no matter how cursory or disinterested in relevant evidence that consideration may be.

To its credit, the proposed impact assessment act does try to do more than avoid acute harm. It requires politicians to consider the extent to which a project contributes to sustainability, including environmental, economic, health, and social factors. It also incorporates a consideration of Canada's climate commitments and indigenous interests, and it mandates reasons for environmental approvals.

However, the IAA should do more than require that factors be considered, since judicial history shows that mere consideration provides no enforceable standard. To avoid uncertainty as to whether the decision will really be based on the legislated factors, we suggest that proposed section 63 of the act be amended to ensure decisions are "based on" the legislated factors rather than simply taking them into consideration. That would be a significant change in law and accountability in the system and would help ensure that decisions that are tied to the EA process are evidence-based.

While the decisions should be based on the proposed section 63 factors, it's important to note that those factors are incomplete. The section should include bottom lines that place an outside boundary on ministerial or cabinet discretion so that all participants in impact assessment understand the minimum expectations. For example, the law should prevent the minister from deciding that adverse effects indicated in an assessment report are in the public interest if the evidence suggests otherwise. The minister should not make a positive public interest determination where adverse effects do not offset some more severe effect, or unless—as you heard from Professor Stewart Elgie yesterday—the benefits substantially outweigh the adverse effects. A project should also not be found in the public interest if evidence suggests it will result in the crossing of a dangerous ecological threshold or will substantially hinder Canada's ability to meet its international or national environmental, climate change, or biodiversity obligations. These bottom lines should not be reduced to optional considerations, which is currently the case with the proposed legislation. Proposed section 63 ought to be amended accordingly.

The bill also does not recognize that in Canada, vulnerable populations such as low-income populations, indigenous communities, and socially marginalized groups are disproportionately exposed to environmental hazards while also disproportionately lacking access to environmental benefits. In other words, environmental approvals often lack environmental justice.

Let me provide an example from some of our work. In "chemical valley", located just outside Sarnia, Ontario, sirens can blare at any time of day to warn people to stay indoors when all-too-frequent pollution incidents occur.

● (1540)

The Chair: I know you're on a roll, but you are going so fast that the interpreters are having a really hard time keeping up with you.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): I speak English, and I'm having a hard time.

Mr. Joshua Ginsberg: My apologies. I'm doing my very best to stay within the time limit.

The Chair: I know you're trying to get a lot into a short period of time. I can't really expand the time limit, but I do need you to just take a breath and slow down, because they can't keep up.

Mr. Joshua Ginsberg: Thank you for that, Madam Chair.

Let me take a step back and provide an example from our work relating to environmental justice. In "chemical valley", which is located just outside Sarnia, Ontario, sirens can blare at any time of the day to warn people to stay indoors when all too frequent pollution incidents occur. In 2011 the World Health Organization said that the people of Sarnia breathe some of the most polluted air in all of Canada. The approximately 800 residents of Aamjiwnaang First Nation live next to industrial facilities that account for approximately 40% of Canada's petrochemical industry.

We recommend the following to incorporate environmental justice considerations into the IAA.

First, there should be definitions of "environmental justice" and "vulnerable populations".

Second, there should be a new consideration under proposed section 22 of the act relating to whether the area impacted by the project is home to vulnerable populations and whether the human health or environmental effects of the project, including its cumulative effects, may be disproportionately high and adverse with respect to those populations.

Finally, there should be a decision-making criterion in proposed section 63 concerning the extent to which the designated project contributes to environmental justice.

The situation in Sarnia also reveals another gap in the IAA and that is the failure to provide for assessments of projects not only on federal lands but those with federal proponents or that are federally funded. In December of last year a chemical company produced a new polyethylene facility in chemical valley designed to increase its polyethylene production capacity by 450 kilotonnes per year. The federal government will contribute $35 million to that project, yet it will receive no federal or provincial environmental assessment. That's an unacceptable oversight. We therefore recommend that proposed section 81 of the act be amended to ensure that effects of all federal activities, whether as proponents or funders, be assessed. Those assessments should use the expertise of the newly created impact assessment agency, which will ensure that assessments of federal projects are independent and seen to be independent.

Finally, I note that the courts are the proper arbiters of when an assessment report is legally compliant and whether the decision conforms to the evidence before the decision-maker. Appeals should be rare but there should be recourse to them where necessary. I note the discussion yesterday concerning a potential appeal or review tribunal, which we absolutely support. However, if that is impossible at this stage, the IAA should provide for a right to review reports under the Federal Courts Act and to appeal the final decisions on questions of law and jurisdiction.

Thank you very much.

The Chair: Thank you very much. I appreciate your understanding and patience in wrapping that up.

Who would like to go next?

Mr. Namagoose.

● (1545)

Mr. Bill Namagoose (Executive Director, Grand Council of the Crees (Eeyou Istchee)): Madam Chair and committee members, *bonjour*. On behalf of the Cree Nation of Eeyou Istchee, I thank you for the invitation to address you today with respect to Bill C-69.

[Witness speaks in Cree]

My name is Bill Namagoose. I'm the executive director of the Grand Council of the Crees, the Cree Nation government. With me today are Cree Nation government representatives Brian Craik, director of federal relations; Geoff Quaile, senior environment adviser; Kelly LeBlanc, environmental and social assessment coordinator; and Jean-Sébastien Clément, our legal counsel.

Bill C-69 must guarantee the Crees of Eeyou Istchee our treaty right under the James Bay and Northern Quebec Agreement to be active and mandatory participants in any environmental or social impact assessment of development projects carried out under federal legislation in the JBNQA territory of Eeyou Istchee. Any federal legislation providing for environmental or social assessment of development projects in the JBNQA territory of Eeyou Istchee must ensure that the assessment is conducted by the federal environmental and social impact review panel, known as the COFEX, established under section 22 of the JBNQA. To achieve these ends, Bill C-69 must provide for a carve-out or distinct regime that specifically addresses the JBNQA territory.

The Cree Nation of Eeyou Istchee counts more than 18,000 Eeyouch, or Cree, occupying our traditional territory of Eeyou Istchee. This territory covers over 400,000 square kilometres and is located mainly to the east and south of James Bay and Hudson Bay. We occupy and intensively use the entire area of Eeyou Istchee, both for our traditional way of of hunting, fishing, and trapping, and increasingly, for a wide range of modern economic activities.

As a result of massive hydroelectric and resource development over the past 40 years, the Cree of Eeyou Istchee have undergone extremely rapid and disruptive cultural, social, and environmental changes. These changes have caused enormous stress on the Cree in terms of our traditional way of life and culture. Fifty per cent of Hydro-Québec power is now generated in our territory.

I will now turn to the specific issues that relate to Bill C-69 and the assessment projects in Eeyou Istchee. Section 22 of the JBNQA sets out the first environmental and social impact assessment and review regime for development projects in Canada. I want to stress that the first environmental and social impact assessment in all of Canada was a gift from the Cree. This assessment is done by tripartite and bipartite committees that assess both the environmental and social impacts of projects.

One of the main objectives of the regime is to ensure that the Crees are active participants in the orderly development of the resources in Eeyou Istchee so as to safeguard their hunting, fishing, and trapping rights, as detailed in section 24 of the treaty.

There are four joint committees established under section 22 of the JBNQA. For today's purposes, the relevant committees are, first, the federal environmental and social impact review panel, also known as the COFEX, a joint Cree-Canada panel that is mandated to review projects under federal jurisdiction. The COFEX is composed of five members: three appointed by the federal government and two by the Cree Nation government. The second is the provincial environmental and social impact review committee, also known as the COMEX, a joint Cree-Quebec panel that is mandated to review projects subject to provincial legislation. The COMEX is composed of five members: three appointed by Quebec and two appointed by the Cree Nation government.

Over the years, the Crees have been involved in litigation regarding section 22 of the JBNQA and the various federal assessment processes external to the JBNQA, including the environmental assessment and review process, or EARP, guidelines and the Canadian Environmental Assessment Act, known as CEAA.

The most recent litigation on these issues ended up with the 2010 decision of the Supreme Court of Canada in Quebec v. Moses. The Moses judgment distinguishes between the environmental review processes internal to the JBNQA treaty and the environmental review processes external to the treaty as required by CEAA. The court held that the JBNQA treaty permits only internal review process, either federal, provincial, or combined. However, an external federal review process is also required where mandated by the federal environmental law.

● (1550)

The federal assessment process external to the JBNQA proved problematic in the past, as they set out a regime in JBNQA territory that did not take proper account of the specific context of the JBNQA treaty, a fact expressly noted in the Supreme Court of Canada in the Moses decision. In addition, federal assessment processes were set out despite the treaty requirements that the federal laws or regulations be established by and in accordance with section 22, including the Cree right to be active participants in the decisions made for the territory.

The key message of our submission today is that Bill C-69 should provide for a carve-out, or distinct regime, to address specifically the JBNQA territory. In so doing, Bill C-69 must guarantee the treaty rights of the Cree of the Eeyou Istchee under the JBNQA, as recognized in the Moses decision, to be active and mandatory participants in the assessment of development projects in Eeyou Istchee carried out under federal legislation. The mechanism to ensure this participation is the COFEX panel already established under section 22 of the JBNQA.

The Crees have consistently urged our federal counterparts to use COFEX, established by the JBNQA, to assess all projects subject to external federal review processes in the JBNQA territory, and not to impose a foreign process.

In Moses, the Supreme Court accepted the Cree arguments in respect to the necessity to ensure Cree participation in external federal environmental assessments of projects in a manner compatible with JBNQA processes. The following sentence of paragraph 48 of the judgment sums up this view of the Supreme Court. I quote:

> Common sense as well as legal requirements suggest that the CEAA assessment will be structured to accommodate the special context of a project proposal in the [James Bay Treaty territory], including the participation of the Cree.

This statement indicates that a project subject to internal assessment by COMEX, under the JBNQA, should not be reviewed by COFEX when an external assessment process is required under federal legislation. We have been in discussions with Canada since 2010, including through the dispute resolution process further to the passing of CEAA 2012, in an attempt to ensure that the changes called for in the Moses judgment are properly implemented.

What is the solution for the JBNQA territory? The solution is simple and anchored in two basic principles flowing from the JBNQA treaty and the Moses decision. One, every time an internal assessment is carried out by COMEX under the JBNQA territory for a project that has impacts within areas of federal jurisdiction or that requires a federal permit, an environmental assessment should be carried out under the proposed impact assessment act. Two, impact assessments under the proposed impact assessment act in JBNQA Cree territory should be conducted through COFEX, already established under section 22 of the JBNQA, thus ensuring direct Cree participation as mandated by the Moses Supreme Court decision.

In order to ensure certainty and predictability, we urge Canada to engage with us immediately in discussions to make the necessary amendments to Bill C-69, and section 22 of the JBNQA, to put in place the various agreements and regulations required to give effect to the proposals that I have outlined here.

On the Canadian energy regulator act, the most pressing amendment required is to clarify that the consent of the concerned Cree first nation is required when a company proposes to construct a pipeline on category 1A lands, where our communities are located, or if a company proposes to engage in related activities or take possession of such lands. This requires an amendment to proposed section 317 of the Canadian energy regulator act.

In conclusion, Bill C-69 proposes a measure of consultation and accommodation with respect to first nations. However, the JBNQA, as affirmed by the Supreme Court of Canada in the Moses judgment, goes further by providing the Crees with the treaty right to full and mandatory participation in environmental and social impact assessments and reviews carried out in JBNQA territory.

We are available to answer any questions.

Thank you.

The Chair: Thank you very much. We really appreciate that.

Up next we have Jamie.

Mr. Jamie Kneen (Communications and Outreach Coordinator, Mining Watch Canada): Good afternoon. Thank you for the opportunity to be with you today.

I would like to begin by acknowledging that we are on the unceded territory of the Algonquin nation. This fact needs to shape our discussions here. It's not just something that we say before we go about our business, but a reality that we need to carry through everything we do.

Like many, Mining Watch was greatly encouraged by the government's commitment to reforming environmental assessment and by the expert panel process that was created to advance that agenda—notwithstanding its compressed time frame—both in the astonishing extent and thoughtfulness of participation from the public, indigenous people, and experts alike, and in the depth of consideration that the expert panel reflected in its report.

My focus today is primarily on part 1 of Bill C-69, the impact assessment act. There are certainly important concerns with respect to other parts of the bill, as well as Bill C-68, the amended Fisheries Act, both on their own and in relation to the impact assessment act, especially regarding the assessment and monitoring of non-designated projects. I would direct your attention to the submission of the Canadian Freshwater Alliance, especially as it appears they will not be called as a witness.

This bill brings great promise and great disappointment. Overall, we find that it cannot fulfill the government's commitment to restore public confidence, and therefore, also cannot fulfill the promise of facilitating good development projects. In some respects, it represents a failure of ambition, where a stronger commitment and stronger leadership are required to meet the challenges of the 21st century. In other respects, it's just a matter of design flaws and limitations of implementation. At this juncture, it may not be possible to address the bigger structural problems, but we have the opportunity to fix many of its deficiencies.

We are greatly concerned that while this committee has heard the testimony of the responsible ministers, it has not heard from the civil servants, the government's own experts who worked diligently to develop the government's direction in the bill that is before us now. We strongly urge you to call those involved in drafting this legislation as witnesses. We're also greatly concerned that there is very little time for this committee to hear witnesses and to develop and integrate the necessary amendments in order to allow for a more thorough evaluation of some of the critical structural aspects of the impact assessment act.

The minister, through the new impact assessment agency, should undertake a short-term review of the new act and develop a package of housekeeping and substantive amendments to bring before Parliament within a year or two. As well, the proposed 10-year parliamentary review will come much too late. The legislative review requirement should be changed to a five-year ministerial review cycle.

I'll not attempt to address the needed amendments comprehensively—there just isn't enough time—but we have worked extensively through the Canadian Environmental Network, the RCEN, and its environmental planning assessment caucus, of which Anna and I are both co-chairs on a national level, which has made submissions to this committee. We endorse and support the observations and recommendations of the caucus, as well as those of its other members, and I would refer you to the caucus's written submission, as we're not actually here on behalf of the caucus.

The bill does make an important advance in setting out a broad consideration of economic and social factors in addition to biophysical environmental impacts. All of those factors are to be subject to public scrutiny and scientific evaluation, allowing decisions to be based on much more transparent reasons and justifications than has previously been the case. This is something we have advocated as critical to allowing an assessment of any proposal's contribution to long-term sustainability. The bill's inclusion of gender-based analysis is also important.

However, as I think Josh has already laid out, the bill does not provide a clear legal link between the consideration of those factors and the justification for actual assessment decisions. Neither does it establish basic criteria to provide a solid and consistent base for those decisions.

As Professor Doelle pointed out in his submission, the enabling nature of the legislation allows for good decision-making to take place, but it does not guarantee it and, without clearer requirements for justification, doesn't even encourage it. Provisions that enable action also enable inaction and do not provide certainty. It is greatly helpful in understanding the application of discretion if wherever the bill says the minister "may", one reads "the minister may not". This is not a question of ill will or irresponsibility, but more one of natural administrative tendencies to conserve money and energy, and natural political tendencies to seek short-term benefits.

● (1555)

We note that the question of discretion has been raised as a concern of all sectors, including industry representatives, indigenous peoples, public interest groups, and environmental law experts, with varying degrees of emphasis on three factors.

First is certainty and clarity, being able to know what the decision-making criteria are at the legislative level, and how they will be established at the level of individual project assessments or regional and strategic assessments.

Second, with regard to fail-safe criteria, is assurance that where benefits or, at least, no harm cannot be assured in all areas, any trade-offs will be subject to defined weighting and limits.

Third, on indigenous self-determination, is definitive protection for indigenous rights, including implementation of the UN Declaration on the Rights of Indigenous Peoples, so that impacts on treaty and indigenous rights and the outcomes of nation-to-nation processes are determinative so that the requirements are clear and knowable. I think the James Bay and Northern Quebec Agreement provides a clear example of that.

We urge the committee to pursue amendments to more closely tie the proposed section 63 decision-making factors to the proposed section 22 factors to include in an assessment.

This is not the first time that you are hearing this, and it won't be the last. We should include a requirement for regulations setting out generic decision-making criteria in each area, and establish a requirement for specific criteria for individual assessments, as well as making impacts on treaty and indigenous rights and the outcomes of nation-to-nation processes determinative and not just considerations.

We have made recommendations for specific amendments and provided background arguments in our written submission in seven other areas to help ensure that public participation is meaningful; that indigenous peoples involvement in any assessment processes respects their self-determination; that there are effective mechanisms to assess regional development impacts as well as policies, plans, and programs, with clear links to project assessments; that impact assessment is linked to monitoring of non-designated projects authorized under the Fisheries Act and the Navigation Protection Act, especially in relation to cumulative effects and project assessments; that energy regulators have a specific and a much more limited role in assessment processes; that international transboundary processes and international obligations and guidelines are given adequate weight; and that scientific integrity is built in, including in mitigation, adaptive management, and follow-up.

In conclusion, Bill C-69 has the potential to make important and badly needed changes in the federal impact assessment regime. Unfortunately, it does not provide clear enough direction on implementation to give us confidence that its promises will be fulfilled. It also replicates many features of the existing failed CEAA, including its limited scope of application. We have provided recommendations in key areas, and we trust this committee to do its best work to improve the bill.

Thank you.

● (1600)

The Chair: Thank you very much.

We'll hear from one more, Ms. Johnston.

Ms. Anna Johnston (Staff Lawyer, West Coast Environmental Law Association): Thank you very much for this opportunity to be here on the traditional territory of the Algonquin nation. My name is Anna Johnston. I'm a staff lawyer with West Coast Environmental Law, a non-profit environmental organization that has been protecting B.C.'s environment through law for over 40 years.

Today I'm going to focus my comments on the impact assessment act. I will make a couple of recommendations touching on the navigable waters act amendments and the CERA, but mostly focusing on the impact assessment act. I won't be able to go into as much detail as we did in our brief, of course, but I will suggest that if you want more specific language we've put a series of actual amendments in our appendix.

The impact assessment act intends to introduce some important and much-needed shifts in the way that we do environmental assessments here in Canada. But we're concerned that the act leaves a lot of detail to guidance and to the discretion of decision-makers and so fails to provide the kind of certainty we need that assessments on the ground will actually achieve the act's goals or that future governments will implement the act as it's intended.

My first set of recommendations is around how to make the planning phase work. We welcome the introduction of a planning phase, which we believe can help improve public engagement, collaboration, and the conduct of assessment, but the combination of the agency decision, as Josh mentioned, about whether an assessment is required at all and the lack of any requirement for there to be clear outcomes of the planning phase risks that this phase will just end up becoming a screening level assessment.

In order to make it function as it should, we recommend two things. One, as Josh suggested, is limiting that agency determination to only a determination that no assessment is required where there's no federal jurisdiction, so get rid of that discretionary ability to exempt projects. Two, turn proposed subsection 16(2) into a requirement that the agency produce an assessment plan that prescribes the things that need to be considered in the assessment, the way the participation opportunities have to be considered, criteria to guide this decision and timelines, etc.

Second, to ensure sustainability we have a series of recommendations. We fully support the transition towards the broader impact assessment model and the purpose of the impact assessment act to foster sustainability, but we're really concerned that, ultimately, decisions don't have to actually help achieve sustainability or help Canada achieve its climate commitments.

As both Josh and Jamie suggested, we fully support that proposed section 63 be amended to require that decisions be based on those factors that are listed, instead of just taking into account those factors, so that decision-makers can't, for example, take into account whose riding the project is in and votes that count. Also, in regard to adding some legal bottom lines, we completely support that to make sure that there are certain circumstances where projects cannot be approved. For example, when there's a significant risk that they will hinder Canada's ability to achieve its climate commitments.

Then, thirdly, there's tightening up that decision statement, proposed section 65, so that instead of just issuing a decision statement, which in my reading of it a decision-maker could just say, I've considered all the factors and believe the project is in the public interest, it actually requires decision-makers to explicitly justify how they've reached the public interest determination and any adverse effects, residual adverse effects.

I've represented clients on an environmental assessment where they've picked up cans out of ditches for years and held bake sales and dances to fund their participation in a project where the review panel report was essentially ignored by decision-makers. It made a mockery of the process and was a completely pointless exercise of years of my client's life. In order for them to feel like they've been meaningfully heard, they need to be able to see that justification that went into the decision.

The third area I'm going to touch on is how to achieve binding regional and strategic assessments. I think the committee has already heard quite a lot on how to ensure that regional and strategic assessment tools are used and used well. In addition to those, we'd recommend, first of all, enabling the minister explicitly to enact regulations prescribing how those assessments are conducted, so that we know that they're done in a robust and rigorous manner, and also to prescribe periodic updates to them so that the information doesn't become quickly out of date.

Secondly, amend the act to require that the strategic and regional assessment outcomes actually are binding on project-level decisions instead of just factors to consider, because, otherwise, if it's all left to discretion there isn't necessarily much of a point in doing them.

● (1605)

Finally, related to that, we'd recommend actually requiring a government decision—either ministerial or cabinet—at the end of a regional or strategic assessment. This can be done in the form of a response to the committee report or agency report, and it can say whether or not it accepts the report, accepts it with modifications, or rejects it. In order for regional and strategic assessments to provide that necessary policy guidance at the project level, we believe there has to be some kind of government decision at the end of them.

I'll next turn to how to ensure that participation is actually meaningful in assessment. There's a good intention in the act to meaningfully engage the public. We were quite happy to see that there's no more standing test, but we're again worried that the lack of specificity in the act means that assessments don't necessarily need to provide those meaningful opportunities. I just want to make it clear that the goal here isn't to get 100% agreement on decisions, but there ought to be and can be a 100% buy-in of them. To that end, our earlier recommendation that the agency be required to produce an assessment plan will go a long way to helping get buy-in by setting out a participation plan that the public has actually been consulted on in that planning phase.

In addition to that, we would recommend a pretty simple amendment to the public participation processes to say that public participation should be meaningful and in accordance with that assessment plan, and then amending those timeline provisions to allow the agency to come up with alternate timelines in that planning phase. A little bit of flexibility to adapt the length of assessment processes is required.

Finally, I'll touch a little bit on the federal projects and getting the federal house in order. The provisions respecting federal proponent projects on federal lands and projects outside of Canada were quite disappointing. To better ensure the federal government's own projects actually help achieve sustainability, we would recommend, as Josh pointed out, including as a trigger for those projects that have federal funding or where there's a federal proponent on provincial crown land or private land, appointing the agency as the responsible authority rather than letting federal proponents self-assess, and bolstering the public participation opportunity, which currently just says that the federal authority should make a determination and provide a 15-day comment period before that determination is made.

They've already made the decision. They're not even doing an assessment there, so lengthening those public participation processes and requiring the federal proponents to provide project descriptions is a pretty basic amendment that should be a given in any assessment. Then they should have a comment period on the draft determination.

In our brief, we made recommendations on a few other areas, including, really importantly, respecting how to uphold indigenous rights, jurisdiction, and decision-making authority. Given that this committee is hearing from a number of indigenous colleagues, I think I'll defer to their submissions on that front.

I will just quickly turn to a few recommendations respecting the Canadian energy regulator act and the Canadian navigable waters act, as I think it will now be named.

We didn't provide a brief on the CERA. We support the recommendations that a number of our colleagues, including the Pembina Institute, Environmental Defence Canada, and Équiterre provided. In particular, we would like to support amendments that would align the CERA with the impact assessment act in requiring that reviews of energy transmission projects consider climate implications and align with Canada's climate targets.

In addition to those submissions, we have one additional thing that we'd like to bring to your attention. We'd recommend amending proposed sections 201 and 202 of the CERA to allow non-landowners to submit comments on detailed routes and to participate in hearings on detailed routes. Right now, those provisions are limited to landowners, but there are of course going to be circumstances where landowners are not aware of sensitive ecosystems or stream crossings, or where pipelines will cross on provincial crown land. Just to make sure that we're actually routing pipelines and transmission lines where they ought to go, include general-public provisions in those.

Finally, on the navigable waters act, we did submit a brief on that. I just want to make two really quick comments. One recommendation would be to amend proposed subsection 7(7) to add environmental considerations to the factors that have to be considered when assessing projects under that act. We've been told that the amendments to the navigable waters act are supposed to act in conjunction with the impact assessment act and that the navigable waters act is supposed to catch projects that aren't being caught.

● (1610)

If you're not considering environmental factors under the CNWA, or NPA, then it's not a safety net.

Second, either delete the definition of "navigable waters" or amend it. Right now, it takes a much more restrictive definition than what a lot of the common law cases say, so either delete it or apply the broader common law definition to make sure we are capturing them all.

Thank you very much.

The Chair: Thank you very much.

Thanks to each of you for your very detailed advice and recommendations.

We'll open the floor to questioning, and we'll start with Mr. Amos.

Mr. William Amos (Pontiac, Lib.): Thank you, Madam Chair.

Thank you to our witnesses. We really appreciate the effort and consideration you have invested in these presentations and also in your written submissions. We will be reviewing all of them closely.

Mr. Namagoose's comments have caused me to turn my mind to the issue of substitution and equivalency around federal and provincial assessments.

Mr. Ginsberg, Mr. Kneen, and Ms. Johnston, what is your assessment of the current framing of these provisions? What strengths and weaknesses do you see?

In my estimation, this is one of the most crucial aspects of this legislation, but all too often not enough attention is paid to how we're going to make this law work in the context of federalism. If you could please expand on that, I'd appreciate it.

● (1615)

Ms. Anna Johnston: I'd be happy to respond.

We believe that the ultimate goal of the intention of "one project, one review", should be multi-jurisdictional collaboration, not substitution, and that where any kind of collaboration or substitution is allowed, that should be to the highest standards, so we were fairly disappointed in those provisions in the act.

We think if the government wants to move forward with retaining substitution as an option, it needs, first of all, to require any substituted processes to implement them or to fulfill the conditions that are set out in proposed section 63, rather than just be based on the minister's opinion that they will live up to some general standard.

Add a requirement to obtain indigenous consent on substitution decisions and then require participant funding on substituted processes. Right now the act exempts the federal participant funding program from substituted processes, but a lot of provincial jurisdictions, including mine, don't provide participant funding. That should be maintained.

Mr. Jamie Kneen: I think the drafters have tried to cover too much ground with one concept. They have tried to accommodate substitution of provincial processes and recognition of indigenous processes in the same basket. It's not working because there's a set of requirements that we'd quite cheerfully apply to provincial processes. They have to meet the standards that Anna was talking about, but provincial jurisdiction over natural resources is not the same thing as indigenous self-determination and constitutionally protected agreements like the JBNQA and all the modern comprehensive claims in addition to recognition of treaty rights. Nation-to-nation relationships are not the same as federal-provincial relationships, and they don't work well together.

I have proposed elsewhere that they be treated separately, that there be specific recognition of nation-to-nation relationships in law, not just in rhetoric, and that the provincial jurisdiction be treated in a more collaborative way so there is provincial jurisdiction. We have had harmonized and successful environmental assessment processes and we can work on expanding them to sustainability assessment or impact assessment, and of course, there is lots of room for other co-operation, other collaborative processes. Whether that is regional municipalities or provinces doesn't really matter.

Mr. Joshua Ginsberg: I would just add one brief point, which is that if it is proposed to substitute the federal process with something new that may be less familiar to participants, there should be an opportunity to comment on the form that assessment will take, which would involve a description of the method of substitution to be posted on the website created by the act, and an appropriate time for the public to comment and potentially adjust it to reflect the needs of the particular assessment.

Mr. William Amos: I'd like to ask for your quick comment on the merits of the impact assessment agency as a dispute resolution entity versus a separate tribunal, such as one that was discussed yesterday.

Ms. Anna Johnston: I don't think the agency could really fulfill that function. It's going to be at the heart of a lot of the disputes. You don't want the responsible authority providing alternative dispute resolution and mediating disputes that are between it and the public or it and other jurisdictions, as examples. Having a tribunal take over those functions is a terrific idea.

Mr. Joshua Ginsberg: If we're talking about a review of a report or a decision, after the fact, clearly the agency itself is a bit too embedded in the initial determination to be impartial. If we're talking about something like mediation, which existed under CEAA 1992, then potentially, there's a role there.

The Chair: That's it. Sorry, Will.

Go ahead, Mr. Sopuck.

Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC): Thank you. I was disappointed in the testimony of the witness. I didn't hear any enthusiasm for economic development and the human capital that is elevated because of economic development.

Mr. Ginsberg and Mr. Kneen, I could tell that both of you were opposed to the changes we made in CEAA 2012. That's a fair assessment.

Mr. Ginsberg, I'll ask you directly. Which environmental indicator, quantified, in Canada, declined because of the changes we made in CEAA 2012? I'm asking for a number regarding a science-based evaluation of the environment. Which environmental indicator declined?

● (1620)

Mr. Joshua Ginsberg: One thing that certainly does spring to mind is that we are not—and this has been confirmed recently by the commissioner of the environment—making sufficient progress towards meeting our international climate goals.

Mr. Robert Sopuck: [*Inaudible—Editor*] CEAA 2012?

Mr. Joshua Ginsberg: Well, it certainly does.

Mr. Robert Sopuck: Is it? Can you prove that?

Mr. Joshua Ginsberg: Environmental assessment plays a very crucial role in understanding and ensuring that projects, in fact, help to achieve our climate goals rather than derogate from them. It's fairly clear that we are not on track to meet those goals so far. An act that explicitly contemplates climate and makes it a bottom line should go a long way towards improving that particular indicator.

Mr. Robert Sopuck: I didn't hear a number, which is fine. I expected that. When I was on the fisheries committee, I asked witnesses who were against the changes we made to the Fisheries Act and exactly the same thing happened. Not one person could point to any environmental indicator. I'm a strange kind of guy. I actually look at the environment, look at the numbers for the environment and I hear none of those, unfortunately.

It's quite obvious that what is proposed here is a throttling of Canada's natural resource industries, and by extension, the economy. I should note that the Royal Bank has pointed out there's a real outflow of capital from this country. "Investment by foreigners has collapsed. Foreign direct investment...in Canada clocked in $31.5 billion in 2017, down 56% since 2013, when it totalled $71.5 billion."

Again, the wreckage of communities that results from that is only beginning to be felt. Chris Bloomer, the head of the Canadian Energy Pipeline Association, pointed out that Canada has a toxic regulatory environment. Our competitiveness has slipped to number 16 out of 17 countries, when we used to be in eighth place. By the looks of it, I don't think we're going to have to worry about too much economic development, especially in the resources sector, over the next little while.

Mr. Ginsberg, you were quite negative about ministerial discretion, which is quite common in groups like yours. Why is it so offensive that people who are elected by citizens have the ultimate decision-making authority in the public interest?

Mr. Joshua Ginsberg: The problem with excessive discretion is the uncertainty that it creates. If you go into a process without understanding the benchmarks by which you're going to be judged, neither the industry that wants to get a project built, nor other participants can have any confidence that the outcome will reflect their concerns or will contribute to sustainability, which is the purpose of the act. Bottom lines help to level that playing field.

Mr. Robert Sopuck: That is what we politicians do. We have our ear to the ground all the time, listening to what the public is saying, and we have to factor in every situation before a decision is made. At least when an elected official decides something, citizens have a recourse. None of you are elected, with the exception of Mr. Namagoose I presume. When unelected bodies make final decisions, where do the citizens go? They can't go anywhere.

We had a very interesting testimony this week from Chief Ernie Crey of the Cheam First Nation in B.C. He was quite blunt about what environmentalists have been doing. He's the subject of an article whose headline reads, "Environmentalists 'red-wash' their fight against pipeline, First Nation chief says". I'm quoting. This isn't me saying it. The article quotes Chief Crey as saying, "We have a vigorous environmental movement in B.C. and they have learned that they can use aboriginal communities to advance their agenda."

We also had testimony from Chief Boucher from Fort McKay First Nation, an area I'm familiar with from when I spent time in the oil sands. They have 100% employment in their community. The annual income is $120,000 per year and they have financial holdings in excess of $2 billion, thanks to their willingness to do business with oil companies in the oil sands.

Mr. Kneen, is it a bad thing to have 100% employment?

● (1625)

Mr. Jamie Kneen: No, of course not. Full employment is a great thing. The obstacle we're wrestling with is the lack of consistency in decision-making and the inability, without criteria in front of us, to understand the implications of those decisions. The point of trying to put economic development in the context of a sustainability assessment is to be able to actually interrogate all of those claims, understand the direct and indirect effects of any proposal, and evaluate them as such rather than in a black box behind some political content.

Mr. Robert Sopuck: Communities with 100% employment are happy.

The Chair: Thank you very much. We're out of time on that questioning. We'll obviously have another chance to pick it up.

Ms. Duncan.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Thank you, Madam Chair.

Rather than propounding, I'm looking forward to hearing more from you. That was great testimony and these are great briefs. I wish we could have more time with you. I want to thank Mr. Kneen for the recommendation that if they sign off on this really fast, let's have another review, quickly, to solve the problems.

My first question is to you, Mr. Namagoose. I'm very interested to notice that there is what one might call a carve-out in proposed section 40 of the bill, for the Mackenzie Valley Resource Management Act. The bill doesn't seem to recognize the difference between first nations who are under historical treaties and those who are under modern treaties—first nation final agreements. Of course, the Cree in Quebec have been innovative in the agreements that you've managed to reach. That's one area that probably needs a look. Why are we only singling out Mackenzie Valley resource management for that? It raises the question with me about Nunavut, the Yukon, and so forth.

Are you, Mr. Namagoose, proposing this mechanism only when the projects are on your lands, or are you proposing it also if your lands and peoples are impacted?

My second question is, are you proposing a joint panel where the Cree would determine who your representatives are?

Third, are you proposing that it be under the auspices of your agreement? I'd appreciate a bit more clarity so that we can make some sound recommendations for the bill.

Mr. Bill Namagoose: The James Bay and Northern Quebec Agreement was signed by Canada and Quebec in 1975. It was actually signed by the Liberal government of 1975. It's a treaty, and it's protected by the Canadian Constitution. It's part of the law. It was the first environmental and social impact assessment of its kind in Canada. Like I said, it was a gift from the Cree to Canada.

It has legal status. There is already a process in there, and we would want that process to be respected. The main thing is that the Crees participate in the review process, and it's a social impact review process also. The JBNQA was the deal for getting the approval and the construction of the project of the century in 1975. We accommodated that project of the century in 1975. Section 22 has already assessed and approved and recommended an amended huge project in the territory. It's a successful process when the Crees are participants. Rather than being outsiders and making complaints, we are participants in the process.

Ms. Linda Duncan: I suggest that what you have raised here is very important. If there's anything you can further submit to our committee to outline how you think that might go.... For example, I would think you don't just want an indigenous person appointed to a panel. You want to have representatives of the northern Cree selected by the northern Cree. Any details you could provide would be really helpful.

My other question is to the other three on the panel. What do you believe are the most critical changes to the bill needed to restore public trust in the federal assessment process, perhaps in addition to what you have already said? What do you think needs to be done?

Mr. Joshua Ginsberg: In addition to my point about clarifying the decision criteria in proposed section 63, the bottom line I discussed, which is absolutely critical, I would also underline something I didn't get a chance to mention, which is the importance of the central role played by regional and strategic assessments.

There is a huge amount of promise in this bill that, for the first time, we may get regional assessments that look at landscape issues and strategic assessments that consider policy issues in a way that can provide guidance to project-level assessments so that they don't get bogged down with those issues.

The problem, or the gap, is that it is not clear from the language of the act that those assessments will actually proceed, because once again they are left to discretion. A helpful amendment would be to have the expert committee contemplated in the bill recommend a list of regional and strategic assessments that ought to occur and to have the minister respond to that, or even better, to schedule those regional and strategic assessments in the bill such that they stay on the radar and don't fall off it if, for instance, there's a change of government. That's the critical piece.

● (1630)

Ms. Anna Johnston: I suppose I can't say everything—

Ms. Linda Duncan: Sure you can.

Ms. Anna Johnston: —because it's a package.

I would go back to two things. One would be the planning phase. Reflecting on what Mr. Sopuck said about the regulatory environment now being fraught, I think one of the intentions of CEAA 2012 was to shut the public out of environmental decision-making. We're in this boat now where we have protests and lawsuits because the public don't feel like they have a forum in which to meaningfully engage and have their concerns heard. The more you can do in the assessment-planning phase, the more you can get the relevant jurisdictions—indigenous peoples, the public—to sit around the table together and design the process to ensure that all the right things are being considered and that participation occurs in a meaningful way and collaboration agreements are entered into, the more easily you will get to decisions that work for everybody.

The Chair: Thank you very much.

Next up is Mr. Bossio.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you.

I want to expand a little bit on where Mr. Amos left off. I assume you are familiar with Ontario's Environmental Review Tribunal process, which is used as an appeal process. I want to know if you feel we should be creating a statutory right of appeal that proceeds from ministerial or cabinet decisions on designated projects to a specialized independent body established under the act on the model of Ontario's Environmental Review Tribunal. Would you concur with that? In saying that, are there any other suggestions you would recommend under proposed section 63 to ensure we are fully involved in protecting the public interest?

Mr. Joshua Ginsberg: I'm happy to address that. As I suggested in my submissions, the idea of a dedicated review tribunal to, in the first instance, review final decisions made under proposed section 65 of the bill is a good idea in my view. Certainly, courts are the default body and can turn their minds to these issues, but to have a body that is both independent and has some expertise in environmental assessments could also be helpful.

As to the model of Ontario's Environmental Review Tribunal, I think it's potentially helpful. I would mention, though, that the issue of access to the tribunal in terms of a leave test is a barrier that ought not to be replicated if we are going to do that federally.

Mr. Mike Bossio: Okay.

Anna, would you like to—?

Ms. Anna Johnston: I think it's a great idea, as I said before. I would add two functions of this body if it is implemented. One would be to provide alternative dispute resolution in multi-jurisdictional negotiations, government-to-government negotiations, all the way through. In the planning phase, for example, if jurisdictions can't come up with an agreement to conduct an assessment, this tribunal could either provide mediation or arbitration to get us to a process that everybody agrees on.

Second, I would recommend equipping this body to undertake quality assurance programs for project-level follow-up programs as well as for the implementation of the act in general. I think one of the witnesses yesterday was talking about how a quality assurance program would greatly contribute to the learning in environmental assessments in general. Having some kind of an independent oversight body to do that would really help us to begin to learn from these assessments.

● (1635)

Mr. Mike Bossio: What other public interest aspects would you add to proposed section 63?

Ms. Anna Johnston: As public interest...?

Mr. Joshua Ginsberg: Perhaps I'll just underline the environmental justice aspect, which is an important consideration—again, on the theme of levelling the playing field—in taking into account that environmental impacts don't actually impact everybody in the same way. If proposed section 63 were sensitive to this, it would be a significant improvement to the bill.

Mr. Mike Bossio: Would anyone else like to add?

Ms. Anna Johnston: We've recommended adding any criteria that are set out in regulations to help guide the decision, allowing the minister to enact regulations that would help provide that kind of guidance in a more detailed way that we can't get in the legislation, and then any criteria that are developed in the assessment plan that I mentioned in proposed subsection 16(2) that could be tailored to the specific needs of the project.

Mr. Mike Bossio: Jamie, if you're interested, please respond quickly.

Mr. Jamie Kneen: I have just one quick additional point.

This is a good place to link to regional and strategic assessments, to say that this is where you take into consideration the results or the output of those kinds of assessments and where they become part of the decision.

Mr. Mike Bossio: In Bill C-68, the Fisheries Act, there's a description of the relationship with indigenous communities under that act. Are you familiar with that part of Bill C-68?

A voice: No.

Mr. Mike Bossio: Okay. It may be then, that the question isn't going to be as....

Bill Namagoose, are you familiar with that part of the Fisheries Act in Bill C-68?

Mr. Bill Namagoose: I would ask Jean-Sébastien to—

Mr. Mike Bossio: I would just say that to me it seems to be a very good description of the way the relationship should happen with indigenous peoples under Bill C-69. I would like to see it taken from Bill C-68 and brought over into Bill C-69. I don't know why it wasn't done in the first place. Anyway, I'll leave this question there.

I know we've already spoken a bit about meaningful public participation, but I'd like to get your feedback on the early planning phase of public participation, looking at meaningful public participation but also alternatives and need. Can you talk about how you would define it and how you would ensure that the right criteria are in place to make it happen?

The Chair: Please give a short answer.

Mr. Joshua Ginsberg: Really briefly, I would say that public participation is meaningful when it has a real opportunity to impact both the conduct of the assessment and the final decision.

One thing I will draw the committee's attention to is that the scoping decision in proposed section 22 is right now left to the discretion of the minister. Effective public participation would influence that decision.

Mr. Mike Bossio: Anna.

Ms. Anna Johnston: I think that to be meaningful, processes also have to be deliberative, engaging the public, in the planning phase, on the way in which they want to be engaged. What are the seasons in which they may not be around because they're out on the land? Do they want formal hearings in which they're lawyered up, or do they want to sit at round tables. It's a matter of engaging them early on in that process.

Also, as you mentioned concerning alternatives to the project, do you want a road to get to that mine, or do you want fly-in? What works best for the communities?

The Chair: Mr. Sopuck.

This will be our last question for this panel.

Mr. Robert Sopuck: I want to continue with the human aspect of resource development and communities.

Chief Crey was an incredible witness. What a forward-thinking leader for his community. He spoke at great length about how the young people in his community were so looking forward to the Trans Mountain pipeline, eagerly awaiting the training that would occur because of that pipeline's going forward, and so on. He also expressed some great concern over the lack of foreign investment in Canada. He had a deep understanding of the Canadian economy and the interactions of his community with the larger economy and of the need for foreign direct investment.

Ms. Johnston, do you think Chief Crey's concern for his community and for the absolute requirement for the Trans Mountain pipeline to go through is misplaced, from his perspective? He was looking at some 300 million dollars' worth of mutual benefit agreements, and that's all at risk now. Is it a good thing that this is at risk?

● (1640)

Ms. Anna Johnston: I think the real misfortune with Trans Mountain is that it was assessed under a process that was intended to shut people out. As I mentioned earlier, the reason we're in this situation now is that indigenous peoples and concerned members of the public, communities over whose lands and waters the project would be built, were deliberately excluded from the assessment, or when they were able to participate, weren't able to have a meaningful say. This project was attempted to be rammed down the public's throat. If all of the parties had been brought around a table in a deliberative manner at the very beginning, either maybe everybody would have figured out that the thing couldn't proceed before Kinder Morgan invested a billion dollars in it, or maybe they could have found alternative routes or solutions. An example would be sending it, I don't know, down to Washington for refining.

In any event, I think that the issue here isn't about the impact assessment act being the cause of investor uncertainty today.

Mr. Robert Sopuck: It's the existing toxic regulatory environment that this government has put in place.

To counter you, I disagree completely with everything you just said. In the article about Chief Crey, it says, "The Cheam are one of the 43 First Nations that have mutual-benefit agreements with Trans Mountain—reportedly worth more than $300 million — that offer skills training for employment, business and procurement opportunities, and improvements to local infrastructure." You, obviously, think that that's a bad thing.

Now, Chief Crey also likened the activists'—and I'm not going to call those people environmentalists because they're not—attack on economic development to the attack against the fur trade, the attack against the seal wars.

I want to read a bit of testimony here. I would like to read to you what happens when communities' economies are cut out from under them. This is from the September 2016 indigenous affairs committee when they were looking at indigenous suicides. One Peter Williamson, an Inuk from the Northwest Territories, wrote:

> There was what we call the seal wars at the time, when Greenpeace and other environmental activist organizations who wanted to raise money started to attack the sealing industry, which Inuit were a part of. They really relied on seal hunting to make a living. I remember as a young person that there were a lot of people in my community....

Then he goes on to say, about traditional lifestyles, that the way you were brought up makes a difference.

> We started losing that in the 1970s, and the 1980s too, but it started in the 1970s. Once that happened, more people did commit suicide.

It was mentioned in the House today that, in Alberta, suicide rates are increasing because of the strong decline in the oil and gas industry. Families are being threatened with economic disaster.

Does any of this resonate with you, Ms. Johnston, or does your organization—and I read on your website that you're very proudly supported...you're funded by Americans, funded by foreigners—

Ms. Linda Duncan: Madam Chair, I have a point of order. I would like you to make a ruling on relevance. We're here reviewing Bill C-69. If my colleague here has an explanation about the relevance of what he's raising to what they're requesting be in this bill, then I would be happy.

Mr. Robert Sopuck: I am happy to answer that.

The Chair: I appreciate that.

Mr. Robert Sopuck: It is directly related to the testimony that Chief Crey gave on his comments regarding Bill C-69, so my colleague is out of line.

The Chair: Let's bring it around to what we're studying here. This is great. Carry on, please.

Mr. Robert Sopuck: Bringing it back, this toxic regulatory process that this bill is pancaked on threatens communities' and people's livelihoods.

I read somewhere an interesting saying about how if you give a person a livelihood, you give them a life. Why is it, Ms. Johnston, that you and your groups never talk about the importance of livelihoods?

Ms. Anna Johnston: Actually, we do. In most of the literature that I produce, I mention livelihoods.

I also mention community needs, which, of course, are at the heart of what we're attempting to achieve, in terms of both environmental sustainability and also the economic well-being of Canadians, the intra- and intergenerational equity that we're hoping the sustainability purpose of the act will achieve. Also, the meaningful public participation provisions that we recommended are really designed to help get communities around the table to be a little more involved in decisions that directly impact them and their livelihoods.

I'll just note that it's not just about the number of jobs that projects effect. It's also about the plurality of jobs that projects often effect. You have to look at not just the amount of long-term, permanent employment and how many workers are coming in from out of town, but also at whether or not a project—for example, the Site C dam—is going to undermine the traditional farming practices of local community members and other livelihood opportunities. So, yes, that's very important to us.

● (1645)

The Chair: Thank you very much to all the panel members. You've given us a lot to consider as we work through this bill. I'm going to suspend the meeting and bring up the next panel.

Again, thank you for your time today.

● (1645)

(Pause)

● (1650)

The Chair: While we're having everyone take their seats, I'll mention that I neglected to recognize two members on the committee who aren't normally with us. They are MP Dave MacKenzie and MP Stephanie Kusie. I know Stephanie's been with us before, but I think this is Dave's first time.

Welcome. It's nice to see new faces at the table.

We now have our second panel. As I mentioned before, we do have votes. The bells are going to ring at about 5:30. We are in the same location, just down the hall, so I'm hoping we'll have the will of the committee to continue until about 10 minutes before votes. That way we can get in as much time as we can before we have to break.

Today we have Stephen Hazell, director of conservation with Nature Canada. We also have Jay Morrison, chair, environment committee, Paddle Canada, and we have Rodney Northey, who is a partner with Gowling WLG (Canada) LLP. He was on the expert panel that studied the impact assessment process.

Thank you for joining us today. I would like to turn the time over to the panel. You have 10 minutes each. I don't like to cut in, but I have a yellow card for when you have a minute left in your time. I have a red card for when you've run out of time. I don't mean for you to just drop whatever you're saying, but to just wrap it up quickly. As I said before, I use the same rules for the committee members. I try to be fair.

Who would like to start?

Go ahead, Mr. Hazell.

Mr. Stephen Hazell (Director of Conservation, Nature Canada): Thank you, Madam Chair and members of the committee.

My name is Stephen Hazell. I'm with Nature Canada. I have a long history with environmental assessment. I worked for the Canadian Environmental Assessment Agency when the initial regulations for CEAA 1995 were developed, so I have a long history with environmental assessment.

I wanted to say first of all that in the current bill, Bill C-69—and I'll be focusing on the impact assessment act provisions—there's a lot of good stuff. We support strengthening this impact assessment agency, requiring assessments to consider a project's contribution to sustainability, the incorporation of indigenous knowledge, and including Canada's climate commitments. These are all good things. We support the increasing transparency in decisions by requiring the minister and cabinet to provide reasons for approvals.

I wanted to focus on five areas in my comments. I want to talk about discretion and legal requirements, triggers for impact assessments under the act, the project list, getting federal house in order, and regional and strategic assessments. Some of what I say will overlap a little bit with what my colleagues have said in the previous panel. Some of it I hope will be new.

The first thing I want to say is that, leading up to 1992, the primary focus of the environmental community and Canadians generally was that we needed rules. We needed laws. We needed to know what projects were going to be subject to a federal assessment and which ones weren't. That was the key objective.

With CEAA 2012, we lost that almost completely because, with very few exceptions, there are no legally binding rules for what would be assessed and what would not. Unfortunately, this act sort of perpetuates that problem. It creates discretion at two levels.

No projects are assessed under the current proposed law unless they're on the project list. We're disappointed by that. Even if they are on the project list, it doesn't mean they are going to be assessed. They go through a whole process, the early planning process we talked about. At the end of that, the minister makes the decision whether there should or should not be an assessment. There's discretion all the way along, which just creates uncertainty for everybody. I would put it to you that it also politicizes the process.

Whereas under the 1995 law, proponents, stakeholders, and governments knew what was going to be assessed, under this law, we have no idea. We really don't. It will be at the discretion of the minister. That is something I would ask the committee to reflect on. Think about ways in which we can limit that discretion. Some ways have been suggested by colleagues in the previous panel.

The second thing I wanted to talk about is triggers for impact assessments. We're disappointed that the project list is the principal trigger for the assessment of projects. What it means is that many federal decisions that adversely affect the natural environment will not be assessed because the project list, as it's currently written, is very narrow.

Nature Canada starts from the position, and I think we would all agree, that one key function of environmental assessment is to provide good information about environmental effects and sustainability effects so that we can make good decisions. Ultimately it's about how we can make good decisions about projects. If the whole legal regime is focused on a handful of projects that are on that list, that means we're not going to get there. The decision-makers are not going to have the information they need to make good decisions.

I also want to note that the 1995 law had four distinct triggers. There was a regulatory trigger, a dispositional land trigger, a federal proponent trigger, and a funding trigger. Now, Mr. Northey may remind you that the expert panel in its report recommended that we continue with that four-trigger approach from CEAA from 1995. It was abandoned in the 2012 law.

● (1655)

What projects do we need to start getting better information about so that we can make good decisions? High-carbon projects—projects that we know are going to produce megatonnes or hundreds of thousands of tonnes of GHG emissions—should be assessed under the federal act so we can meet our Paris climate agreement.

There's a good example just downstream from Ottawa, upwind from Montreal, where we're not doing that. A cement plant is going to produce one megatonne of GHG emissions every year, not including all the trucks carrying all the cement. The sulphur dioxide and nitrogen oxide emissions are in excess of U.S. and European standards. Who did an assessment of that project? It wasn't the provincial government. It wasn't the federal government. The little municipalities around Hawkesbury did the assessment. Their only recourse was to deny a rezoning application. The proponent, a European multinational corporation, appealed the refusal of the rezoning to the Ontario Municipal Board.

That's where we sit. A megatonne of emissions are unaccounted for and there are no interventions by either level of government to figure out how we can get those GHGs down. We're missing the boat on that. High-carbon projects have got to be on the project list, at least. We think it would be better if there was a law list, like we had in the CEAA 1995, so that any regulatory approvals under the Fisheries Act, the Canadian navigable waters act, or the Species at Risk Act would be assessed. That would be our preference, but we think we could also do it by way of the project list.

Next, I want to turn to the project list itself. I want to talk about the regulatory approach that's being taken by the Canadian Environmental Assessment Agency for listing projects under your new impact assessment act. We say it's unacceptable.

According to the consultation paper, the project list would "focus federal impact assessment on projects that [would] have the most potential for adverse environmental effects in areas of federal jurisdiction". They're saying that even very bad projects with serious adverse effects in areas of federal jurisdiction may not be listed on this project list so long as there are projects that have more serious impacts. That's a problem. That means they only want to have a very select number of projects listed that would be subject to the whole process.

I want to add that I found nothing in Bill C-69 or in the proposed act that requires the approach that appears to be taken by the agency with respect to the development of these absolutely critical recommendations. We would say delete that word "most", so that the language would read "federal impact assessments would focus on projects that would have potential for adverse environmental effects in areas of federal jurisdiction", not the "most potential". I would make that recommendation.

Next I want to talk about the federal house in order. The exemption of federal projects from assessment under the proposed act is simply unacceptable. As it's written now, federal authorities are required only to determine "that the carrying out of the project is not likely to cause significant adverse environmental effects", and that factors set out in proposed section 84 be considered.

"Just trust us" is just not good enough. Let me give you an example from the Canadian Parks and Wilderness Society. I don't know if they're testifying before the committee, but they said to go ahead and tell the story.

Since 2012, Parks Canada has made 1,600 determinations under a provision identical to the one I just read to you. Instead of doing an assessment, they're required to make a determination based on...we have no idea what. They made 1,600 of those determinations over two and a half years. Not once did they identify a project that had significant adverse effects.

● (1700)

These projects are in our national parks, where presumably we're a little more sensitive to what "significant" might mean. Remember that in national parks the minister has, as her first priority, the maintenance and restoration of ecological integrity when considering aspects of the management of parks.

Am I over...?

Okay. I did want to say something about regional and strategic assessments.

The Chair: I get it. The problem is—

Mr. Stephen Hazell: Just one...?

The Chair: Be really, really quick.

Mr. Stephen Hazell: Very quickly, the idea in the bill of having this expert committee identify regional assessments is a fabulous idea.

The Chair: Okay. That was quick. Thank you very much. I appreciate that.

Who is up next?

● (1705)

Mr. Rodney Northey (Partner, Gowling WLG (Canada) LLP, As an Individual): I've been invited just this second to be next, so I will take the honour.

I'm very pleased to be here. This is the third or fourth time I have been before this committee over a long time—20 years—and I'm always honoured to do this. I am arriving in my personal capacity, but I am one of the four, the gang of four, that wrote the expert panel report. I will say that although I'm not speaking for the other three, I'm very happy to defend any part of that report. I'm still very proud of it and I am happy to speak to any part of it that may assist you in what you're up to.

The other thing I'll say is that I'm a bit like Stephen. We've crossed paths. Stephen didn't quite illuminate how far back he goes, but the very first federal court case that happened to get EA in play in the late 1980s was part of the machinations of Stephen Hazell, for whoever he was working for or with then. He is an esteemed member of how law came to environmental assessment. I'm a little behind that, but I've done two books on federal environmental assessment, one in 1994, believe it or not, on the first 20 years, and now I have a current guide. I come at this with a great deal of interest.

The final thing I want to say just on background is about the panel report. I will speak to one part of it only, but I do want to say here on the record that it's an integrated vision. One of the things that may make it helpful to the committee is that if you want to ask me about a specific thing, we tried to balance all of the interests in the constituencies that we thought were relevant to this: the first nations, the industry, the government, the public, and the provinces. We tried to figure out how all of them had a legitimate role, so pulling one piece out of our report is not likely to be terribly helpful because it's not capturing all of the things that we tried to balance together.

Now, having said that, I am going to say one thing and, strangely enough, it echoes something I said in 1994. I said it in 1994 because it was powerful then. It is that I believe the federal EA law needs a CRTC-like model. It needs a tribunal, full stop. In 1994 I wrote 25 pages for this committee or its predecessor on how to do that. I'm not going to do that again here. The panel gave you a vision on why that's important.

What I want to say very quickly on this topic is about the thing that a tribunal can do. It spoke for itself well then as a model because, unlike a court, the facts and the experts are all relevant. Every time we go to court, we throw out the facts and the experts, and we deal with the law. That surely is not the way to do the best EA. Similarly, notwithstanding how noble they are and how much time our federal ministers and agencies want, they are not the same thing as an independent tribunal in how well they balance and address expertise.

That's the CRTC piece, but now you have one more piece to this that in my view makes it even more imperative, more vital, that you do this. If you are going to have EA deal with the rights of indigenous peoples, which you must in order to deal with UNDRIP, which you must to deal with our Constitution—and you've now embraced that—how are you going to do that without some kind of body that can adjudicate what a "right" is? I believe it needs to be adjudicative, because otherwise the only place you go is court. We surely do not want to have court as the only place where you can talk about rights and get an answer.

What I say is that we really need a speedier, expert-based process to adjudicate the vital question of rights. If you read the panel's report, you'll see that we tried to address consent within a framework of a tribunal. The consent was not absolute; it was embedded in a framework. I cannot see a better way to do that. I'm happy to hear of an alternative, but going to court is not an alternative to that.

Thank you very much for your time. I'm here to try to assist.

The Chair: That was super speedy so that made up for a little bit of run-over there, so I appreciate that.

May we have the next person, please?

Mr. Jay Morrison (Chair, Environment Committee, Paddle Canada): I'm happy to give whatever time I have left to my two colleagues here. What I'm here to talk about is perhaps a little less relevant to you. I had hoped that there might be a few members of the transportation committee who might drop in as guests; I don't think there are. I'm going to focus mostly on the navigable waters aspect of the bill, even though I'm a current member of the board of the Canadian Parks and Wilderness Society. I thank Stephen for mentioning that example.

● (1710)

The Chair: That is why we invited you to come. We wanted to hear about that aspect.

Mr. Jay Morrison: Thank you, Madam Chair.

My name is Jay Morrison and I'm representing Paddle Canada today as the environment chair. I should also mention that I'm the secretary of the Canadian Safe Boating Council.

Paddle Canada welcomes the opportunity to comment on Bill C-69. We have been engaged with the public right of navigation since amendments to the Navigable Waters Protection Act were first proposed in 2009. Closely related to navigation rights is the question of safety, and Paddle Canada has been coordinating its work with the Canadian Safe Boating Council. Paddle Canada has several recommendations with respect to the bill.

The mission of Paddle Canada is to promote recreational paddling instruction, safety, and environmental awareness. Paddle Canada's 3,000 certified instructors teach canoeing, kayaking, and stand-up paddleboarding to more than 10,000 Canadians every year. For the millions of recreational paddlers in Canada, we are the organization that is most concerned with their public right of navigation.

The mission of the Canadian Safe Boating Council is to promote safe and responsible boating throughout Canada. The CSBC contributes to a declining mortality rate for recreational boaters but the annual toll is still much too great and most deaths are highly preventable. When you are boating, wear your life jacket.

Allow me to do a very brief demonstration.

The Chair: Thank you for showing us how to put on a life jacket. That's going to save you from the questions.

Mr. Jay Morrison: One of the benefits of it, as you can see, is that it's just webbing. It's very light, very breathable, and there is no excuse not to wear it. I must confess that until I had a daughter, 10 years ago now, I would often not wear my life jacket if I was on warm waters that I could swim across. I'm a whitewater instructor as well, and I wouldn't always wear my life jacket in whitewater. These are extremely light, easy to wear. Wear them. Most people who die are not wearing their life jackets.

There are a number of strengths and potential weaknesses in the proposed amendments to the NPA in Bill C-69. Our general perception is that the proposals in Bill C-69 may, with some caveats, effectively restore an acceptable level of ministerial oversight to the right of public navigation to all navigable waters. Bill C-69 continues the use of a schedule of waters where proposed works would require ministerial permits. Ideally, and I know some of my colleagues have proposed this, abolishing the schedule would go toward restoring full oversight to all navigable waters. However, effective oversight may be realized through the bill's requirements that owners of works on unscheduled waters give notice to those who may be affected and by providing a dispute resolution process.

The caveat here is that the minister provide sufficient program resources to ensure that proponents do give such notice to all potentially affected parties, including paddlers, and that the minister does respond to unresolved disputes in a timely and effective manner. The bill should specify a time limit for the minister to respond.

Whether this new approach works as intended should be closely examined when the five-year review is done.

I should add that I'm a former senior manager with the Treasury Board and I'm very sensitive to the issue of efficiency and the cost to taxpayers. By implementing this new regime, there is a possibility that the long waiting list of projects and the cost to taxpayers can be reduced. My understanding is that is why Transport Canada has proposed this new approach.

Bill C-69 defines "navigable water" as that which "is used or where there is a reasonable likelihood that it will be used by vessels".

In our view this is sufficiently specific that it would include waters that have been, are currently, or may be used in the future by human-powered craft. Attempts in 2009 at legislating an objective canoe-test definition of navigability—which, by the way, never was in the old NWPA—were, in my view, a failure. This bill's specific definition, therefore, represents an improvement over the old NWPA in securing the right of navigation for paddle craft.

The NWPA contained provisions that certain types of works on navigable waters—notably dams, bridges, booms, and causeways—always would require ministerial permit and the Canadian Environmental Assessment Act specified that such works would require an assessment.

The proposed Canadian navigable waters act does not contain any specific triggers for impact assessment, so we urge that the proposed impact assessment act ensure that works that obstruct flows or change water levels require impact assessment and that provision be made for assessing the cumulative effect of lesser works.

Paddle Canada recommends that such works that completely obstruct navigation of unscheduled waters specify a requirement that a ministerial permit be obtained. This is not a matter of only effectively maintaining the right of public navigation, but it is also a matter of safety, especially in the case of power dams and their treacherous cousins, weirs, where in the absence of safe and reasonable portages, paddlers may sometimes take dangerous risks.

When asked by parliamentarians and officials at Transport Canada to name our main concerns with respect to works, our answer has been power dams. We are pleased that officials have responded positively to the need to mitigate the obvious dangers posed by power dams; however, the hazard also posed by weirs, or low-head dams, requires more explanation.

Weirs often involve a relatively gentle drop, sometimes less than a metre, tempting the uninformed to run the weir in a canoe or kayak or even to swim in it. The drop can sometimes set up a recirculating hydraulic that can trap a boat or a person in the foaming water until they tire and drown. For this reason, those of us who are trained whitewater paddlers refer to weirs as drowning machines. As an example, a weir on the Bow River in Calgary took the lives of 14 people over the course of the last 30 years in many different incidents until it was recently re-engineered. A Paddle Canada instructor, a friend of mine actually, recently recounted to me an incident at a day camp during which in spite of the efforts of a large, strong man who risked his life to attempt a rescue, a young boy drowned when trapped in an innocent-looking current below a weir.

● (1715)

Paddle Canada recommends that no dam or weir should be permitted on any waterway without provision for a safe and reasonable portage with appropriate signage.

Paddle Canada also recommends that in the case of works that completely obstruct navigation, such as dams and weirs where permits have already been granted, Transport Canada should consider the feasibility of reviewing the status of the permit with respect to a requirement to provide a safe and reasonable means of bypassing the obstacle. Of all the rivers on the historical fur trade routes from Montreal to the Pacific and Arctic oceans, the power dams on the Ottawa River stand out as exceptionally poor in this regard. Paddle Canada may be able to assist in identifying opportunities for improvement.

Similarly, we recommend that in order to give the right of navigation full meaning, Transport Canada should also examine the general legal status of portages, particularly on historical routes. Specifically, the department should be able to advise those who travel such waterways whether they have the right to walk on private land in order to bypass natural obstacles such as rapids and waterfalls. If not, the department should examine measures that might establish that right.

Many historical portages have been lost to development over the years. One of them is within sight of these Parliament buildings. The first nations portage that is thousands of years old and closest to us right now was also used by every single one of the early European explorers to bypass the Chaudière Falls. These routes are part of our shared history and must be preserved.

Our final recommendation is that because the proposed Canadian navigable waters act deals with a historic public right that is not established by any overarching document such as the charter, consideration should be given by legislators to inserting a short preamble into the Canadian navigable waters act that describes the nature and importance of this right as part of our Canadian heritage.

Madam Chair, I would like to point out to the members of the committee that while I have been involved for a long time with environmental organizations, impact assessment is not at all my area of expertise. As a certified Paddle Canada instructor who has canoed the 8,000 kilometres from the Gulf of Saint Lawrence to the Arctic Ocean, my expertise is in the safety and navigational aspects of this bill.

I would be pleased to answer any of your questions. Thank you.

The Chair: Thank you very much.

We're going to start the questioning with Mr. Fisher.

Mr. Darren Fisher: Thank you very much, Madam Chair.

Thank you very much, gentlemen, for being here.

Madam Chair, if you could let me know when I'm roughly halfway through, I'm going to share my time. Because of bells, I think it's important that we all get a chance to say a few things.

The Chair: Will do.

Mr. Darren Fisher: Jay, I'm going to go to you.

I hope it's okay if I call you Jay. I assumed that you paddled here, since you brought your own life jacket.

I represent the riding of Dartmouth—Cole Harbour in Nova Scotia. Dartmouth is known as the city of lakes, as I mentioned to you earlier. We're also on the Atlantic Ocean.

I think it's important that folks have the ability to report any issues to navigating or enjoying our beautiful lakes and oceans. I think that should include non-scheduled waters as well. I'm interested in your thoughts on the complaints mechanism. Is it strong enough in this bill? More importantly, is the procedure simple enough that regular Canadians will be able to report an issue with regard to the navigation of our waterways?

● (1720)

Mr. Jay Morrison: Again, that depends on the implementation and whether the department has the resources, and whether they make it sufficiently clear to proponents that they must give notice of works to the public and how that happens. It's also whether the department has the resources to investigate complaints in a timely manner. That's why I put those caveats in there.

I don't know to what level the navigable waters program is resourced today. I know that there are fewer people than there were in 2009 when we were looking at this issue and I appeared before a Senate committee to talk about it. Perhaps because I was a public servant for 32 years, with 20 years at the Treasury Board, maybe I have a little more faith in the intentions of public servants to do the right thing and their ability to do so.

I think it's worth a try, but I think it needs to be monitored. The one improvement that should really be in the bill is that the minister should have a time limit to respond to complaints.

Mr. Darren Fisher: Mr. Northey, I'm going to ask you a quick one because I'm probably going to run out of time.

How would you strengthen this legislation to ensure that projects are truly in the public interest? How would you better define public interest, and how would you change this legislation to keep it from being political?

Mr. Rodney Northey: That's a great question.

The panel turned its mind to that, and our answer was to put the whole thing under the heading of "sustainability". The meaning of sustainability we had as five pillars. The idea was that you would balance those five things.

What I want to distinguish between the pillars of sustainability and what we have is that the pillars were a test. You had to assess all five ingredients and come out with a view that overall you had something sustainable, a test. Public interest is not really a test, because the criteria are so amorphous that one doesn't have any idea what you're balancing or what you're doing with it. I think we've lost something in where this is headed by moving to public interest and away from sustainability.

The Chair: You're halfway through.

Mr. Darren Fisher: Okay. Thank you.

Mr. William Amos: I'd like to continue on the vein of this dispute resolution entity.

From my understanding, having been a counsel at the CRTC, the challenge is that this is a model where you have a regulator that also performs a quasi-judicial function. In this circumstance, would the impact assessment agency be a regulator as well as an adjudicative body, or...? I'm just trying to figure out exactly how it would be structured. We've heard other witnesses suggest that it should be something entirely separate; it shouldn't be the impact assessment agency.

Furthermore, how would one ensure that indigenous considerations would be appropriately built in and consultation appropriately achieved so that such a body would actually pass muster pursuant to UNDRIP and constitutional obligations?

Mr. Rodney Northey: Wow. That was very nicely compressed. Let me try to deal with some of that.

Yes, I do hear the point and the point is well made about the issue of how one entity can deal with these various aspects. I don't have a simple answer for you other than I think we do have a path where you can have an entity that has a tribunal component to it, and that's the way we recommended this. You would have some part of the agency with a board, or whatever we're going to call it, with an adjudicative function. Over to the side, if I can call it that, is a distinctive branch that wasn't controlled by the other parts of it. That's where we try to get to, because we are concerned about a couple things, and you got to this.

How do you get early planning? Is early planning adjudication? No, it isn't. The adjudication and the early planning parts to this are complicated. What we wanted to do was to have an independent body do an assessment, as you've pointed out, and we wanted to have some adjudicative means at the end of it all to deal with it, or in the middle of it to do dispute resolution. I don't think that is problematic if a statute expressly authorizes all the different parts to it. To me it's a kind of balance of powers problem, and you specify the roles of the various entities. That's really the best I can say about this. I don't think they're necessarily in tension, but they need to be separated by a statutory mandate.

There were a few other questions, but you may get back to me.

● (1725)

Mr. William Amos: So, what of the indigenous aspect...?

Am I done?

The Chair: You have seconds. I think you'd better call it quits.

Mr. Sopuck.

Mr. Robert Sopuck: Mr. Northey, you were quite proud of the report that you and your colleagues produced, but I want to look at some testimony that we received not that long ago from the Canadian Association of Petroleum Producers. CAPP and the investment community today see very little in Bill C-69 that will improve investment. I would say we're at a very high risk of leakage of carbon outside of Canada, so the resource won't be produced in Canada but will likely be produced in a jurisdiction with no carbon policy.

Chris Bloomer, from the Canadian Energy Pipeline Association, said, "New projects are grinding to a halt and we have major problems as a sector and as a country accessing new markets for our energy products to the world." He further said, "In short, we cannot see that timelines will improve; we expect them to be longer." Mr. Bloomer goes on to say, "If the goal is to curtail oil and gas production and to have no more pipelines built, this legislation may have hit the mark."

In a legal review by Osler and company, written about in The Lawyer's Daily—you can tell I don't have a life, because I read The Lawyer's Daily—it was quoted by the author, "there is nothing in these legislative proposals that suggests future assessments [of designated projects] will be in any way streamlined, more efficient, or more effective", and that's compared to your review of the legislation.

Are these people all wrong?

Mr. Rodney Northey: I'm puzzled by how many things you wrapped together there.

What the legislation does is not, with respect, what the panel recommended. It's hard when you bring to me what the legislation says and critique it. I will go back to where the panel is. The panel was trying, as I was trying to say earlier, to balance off the various industry interests along with the other interests. I thought the way we dealt with that was through an integrated timeline and by this adjudicative process, the dispute resolution process I was trying to speak to earlier.

The bill doesn't do the adjudicative process and the timelines are really, with respect, not much different from what we have under the current bill, where the timeline is ridden with time outs. The question we were wrestling with is how you get a timeline that actually works.

Mr. Robert Sopuck: So you're saying Bill C-69 is flawed.

Mr. Rodney Northey: Yes, I would say that.

Mr. Robert Sopuck: Okay.

Again, it's quite ironic that only the Conservative members of Parliament on this committee talk about the health of communities, jobs, and incomes. I guess that says a lot.

Mr. Hazell, I live right next door to a national park. I'm the parks critic for the opposition. I have a little insight into how parks work.

Are you aware that under the old CEAA they had to do an environmental assessment for a park bench? If CEAA 2012 gets rid of all those insignificant assessments, it will free up resources to look at real projects that have the potential to do environmental impacts.

Surely you have to agree that an environmental assessment of a park bench is not really necessary.

Mr. Stephen Hazell: Sometimes an environmental assessment of a park bench is necessary. If it's adjacent to a mountain caribou path, that might be something to take a look at. But I completely agree that having 5,000 legally required assessments every year under CEAA 1990 was too many. Having a couple of dozen under CEAA 2012 is too few.

I think we have to strike a balance. We don't want to have too many legal requirements, I agree with that.

Can I just come back to your point about early engagement? I think it's important.

Mr. Robert Sopuck: No, I'm sorry. I have very little time.

Mr. Stephen Hazell: You just asked the question about early engagement.

The early engagement idea—

Mr. Robert Sopuck: I don't think I did.

Mr. Stephen Hazell: —was intended to help industry get through projects more quickly. It was designed for them. The idea is that if we can do early engagement with communities we can reduce the amount of paper that's produced, identify the issues, get communities on board, and get things done more quickly.

We all support that. If it's not working, let's figure out a way to make it work. Let's not throw that particular baby out with the bathwater.

Mr. Robert Sopuck: I'm not going to argue with that. For sure let's figure out a way to make it work.

Just on your park bench thing. All those small things can be developed with standards. We don't need to have assessments for them. Just have the right standards and implement them.

A few years ago I had the opportunity to work in the oil sands. I lived at Denman camp on the Kearl project doing environmental assessment there. Again, with the effect of this legislation on energy and industrial development, I know some on this committee are uncomfortable with this approach because it's so effective.

I would point out that Andrew Weaver, the head of the Green Party in B.C., sent out a news release about an hour ago regarding the Prime Minister's comments on the oil sands. Mr. Weaver said he's disappointed that "the Prime Minister is doubling down on a sunset industry whose expansion puts our climate targets out of reach."

A singular experience for me, when I lived at that Denman camp was the type of people who were in the camp. They came from all walks of life. Many were labourers who up to that point lived on very low incomes. These people's education levels were low. The oil sands were a chance for them. Many were from the Maritimes.

I'm asking this of all the panellists. Do you agree with Mr. Weaver that the oil sands should be phased out?

● (1730)

The Chair: You have two seconds to answer that.

I think we're going to end up having to get the answer in the subsequent question.

Mr. Stephen Hazell: Yes, I do agree.

Ultimately, there's a complete shift in global investment. Renewable energy now receives more investment than the oil and gas industry globally. A transition is under way. It's going to be a tough one. We really have to focus on just transition for workers. Absolutely.

The Chair: That's perfect.

I did have agreement. I just want to confirm with the committee that we're going to keep going until about ten minutes to, and then we'll break for the vote.

Next up is Ms. Duncan.

Ms. Linda Duncan: Thank you very much, Madam Chair.

Mr. Northey, I'm so glad to hear you testify about the tribunal. I think I'm at odds with just about everybody I'm talking to who thinks an agency can deliver what a tribunal can. My experience is with the energy and the utility review boards in Alberta. It's always been a tribunal. I frankly don't understand.

The proposal in here is that the impact assessment agency is going to adjudicate first nations' rights. I just find that an absolutely astounding possibility. Without completely revamping this act, I don't know how we can shift that. Anyway, I was really grateful for your review. I thought it was very sensible. To me it makes perfect sense, based on my 40 years' experience dealing with those tribunals.

I'm deeply troubled with even the concept that the federal government could defer to a provincial government to hear evidence on and rule on matters of federal jurisdiction. I would appreciate.... I can't see any conditions that would make any sense whatsoever. On the other hand, joint tribunals have always been suggested as the way to go. Many provinces push against that because they just want the feds to butt out.

I would like to hear from both Mr. Northey and Mr. Hazell on the issue of substitution.

Mr. Rodney Northey: Do you want me to go first?

Mr. Stephen Hazell: Yes, go ahead.

Mr. Rodney Northey: First, I think the only example we have of trying to do it right now is in B.C., and the B.C. legislation was modelled on the federal CEAA, so there was certainly an effort in the background of that to make them work together.

I would agree with you that, in legal terms, there are some problems because the whole nature of this is that each level of government has some things that are more exclusive, if I could put it that way, and some things are concurrent. The problem with environment is that numerous things are concurrent, but some things are exclusive. How do you deal with exclusive on a substitution? That's very difficult to work through.

On the other hand, to take your model, I think federal-provincial co-operation is the proven path on this and should be the path we go forward with. In that respect, I support where this bill is, but I support where, in fact, we were with EARPGO in the 1980s and CEAA 1992. All of them had a model favouring co-operation and not substitution, and the courts in the late 1980s, when they were quite active about this, also had a fairly strong interest in seeing co-operation and not unilateralism.

That's where I would be on that.

Mr. Stephen Hazell: Could I just say that I don't think substitution is a good idea. It's a bad idea. The reason is that federal departments and agencies have decisions to make, and they have to make decisions based on the best information they can gather. To hand over that authority to look at the information and figure it out to some other agency that has different interests and different priorities is just a mistake.

The joint review process is really the best. Sometimes we do run into problems because sometimes provinces don't necessarily want to allow the feds to come and play, so the committee might want to think about ways in which it can encourage joint reviews through amendments to the bill. That is the co-operative model. That's a better way to go. I think it ultimately results in better decisions.

● (1735)

Ms. Linda Duncan: Paddle Canada, I wish I could spend more time on the rivers but I can't.

Can you speak a bit to the concern that a good number of people are raising with what happened to navigable rivers under the Conservatives and now is also troubling?

I don't think there is anywhere in the provisions the right of Canadians to recommend additions. Some have suggested there not be a list at all and simply all navigable waters require a review maybe based on the significance of the proposal. Could you speak to that?

Mr. Jay Morrison: I could, and to be honest with you, that's where I differ a little from some of my colleagues, especially the ones in the environmental law areas. I know Josh Ginsberg personally. We've served on the Friends of Temagami board together. I think perhaps they are focusing a bit too narrowly on the wording of defining navigable waters as likely to be navigated by vessels. I think saying that navigable waters are waters that currently are or likely to be, really, includes just about anything that we might want to navigate, because in my view it will include what was done in the past whether it was by first nations or people like me who are recreational paddlers.

Ms. Linda Duncan: Do you agree that the definition right now is inadequate?

Mr. Jay Morrison: There really isn't much of a definition. There never was. There's a bit of a myth—

Ms. Linda Duncan: There's a definition in the act all right.

Mr. Jay Morrison: Oh, you mean in the bill.

Ms. Linda Duncan: Yes.

Mr. Jay Morrison: Yes, as I said in my statement, I do think that is adequate—

Ms. Linda Duncan: Okay.

Mr. Jay Morrison: —to include paddle craft, and it's more specific. In the old Navigable Waters Protection Act there was no real definition. There was a common law definition of "float a canoe". In 2009, when I appeared before the Senate committee, the department at that time was proposing a much more specific definition—i.e., 30 centimetres, but also waters that did not have a certain number of natural obstacles, dams, beaver dams, rapids, etc. in them. It really wasn't workable. I pointed out that you only need four inches of water to float a canoe.

I think this definition will work.

The Chair: Thank you very much. I appreciate that.

Mr. Bossio.

Mr. Mike Bossio: Thank you, Chair.

Thank you all for being here today. I'm going to be asking a question each of Mr. Hazell and Mr. Northey.

Mr. Hazell, you brought up the aspect of the four triggers that need to be involved in this, that the application of the IAA just to projects designated by a regulation should be expanded to include other triggers such as federal lands, funds, approvals, and proponency.

Why do you feel this is so important? Also, how do you feel we can actually speed the process up, expedite it, and make it more efficient?

Mr. Stephen Hazell: There are two questions.

Why do we need a more expansive project list, or one that would actually include law list regulations?

The bottom line is that federal decisions, under whatever legislation they're made or wherever they are on federal lands, should be based on sustainability criteria. That's the way we have to do business in the future. If we just decide we're not going to do that, then I think we're really missing the boat, and creating even more problems for our children and grandchildren.

There are events like an Olympics. Calgary has now indicated that it wants to host an Olympics in 2026. Are we not going to do an environmental assessment on that? Will we just let Parks Canada do what it has been doing over the past few years, and just work quietly and not involve the public? I don't think we're going to get to sustainable outcomes that way, and I think the evidence is clear from the information that CPAWS had to get by access request. Again, I think that's another issue that we're having to go to access to get information that should be publicly available.

We really have to expand the list. Law list provisions would be our first preference. If we're not going to go there, then we have to really focus on the project list.

One comment that I would make to the committee is, are you not concerned that you are buying a pig in a poke, here? You're being asked to make recommendations for amendments, bring this bill forward for third reading, when you have no idea what's on this project list. The project list is really the primary way in which projects will be assessed. Isn't that a problem? I suggest to you that it is and that you should know. You should at least have a draft list from the government.

● (1740)

Mr. Mike Bossio: Thank you, Mr. Hazell.

Mr. Northey, on the expert panel you had talked about the position of why life-cycle regulators should not lead or chair, or be on the IAA, a part of the agency. Could you explain the importance of that, as to why they should not be in that position and why that recommendation was made?

Mr. Rodney Northey: I'd like to think that we were not quite as absolute as saying they shouldn't have any role. I think what we were really concerned about was the idea that some two of the three legs to environmental assessment right now were largely industry regulators and were, at least in the case of the National Energy Board, in some public controversy over how independent they were of the industry they were regulating.

What we were trying to do was to disentangle the impact assessment component of their mandates from their regulatory components. We were pretty blunt about having an agency lead IA, but I'm not troubled by the idea that they work together with those regulators.

What we're trying to do, though, is to speak to the point that you have to have some independence to do IA that isn't simply covered by the industry mandate, if I could put it that way. That's what we're wrestling with.

Mr. Mike Bossio: I'd like to expand—and finish off, I have a bit of time left—where Mr. Amos was going.

I was involved in an Environmental Review Tribunal process in Ontario. I understand the environmental assessment and tribunal process, and I think it was a good process that we went through in Ontario. Would you see that as a good addition to this bill, to bring forward an Environmental Review Tribunal, as an appeal process, and why?

Mr. Rodney Northey: I think I answered that one. Absolutely, I think that is exactly what we need.

The only thing I would say is that the Environmental Review Tribunal might be inappropriately focused on environment, relative to what we're speaking of here, because, as I said earlier, I think one of the most compelling things that needs to be addressed is indigenous rights.

One of the things that's not in the Environmental Review Tribunal mandate but that the panel was very interested in—and I want to emphasize it in light of the industry concern here—is what the timeline is. How do we make sure that regulators, if independent, are responsive to timelines? Ontario's not had a good past in its environmental hearing processes of really mandating controlling timelines.

I would want to make sure we didn't go down that path here, if I were to support your recommendation.

Mr. Mike Bossio: I think Mr. Hazell earlier wanted to make a comment on that as well.

Mr. Stephen Hazell: There has been a lot of support for the idea of having a tribunal and doing actual environmental assessments, as Rod was saying. I just want to make sure it's clear that this idea, the CRTC-like body or the tribunal, is different from what others have been talking about. That is the right of appeal, the right to appeal decisions. You have a decision made at the political level, subject to some type of appeal or perhaps a revved-up judicial review process. Those are two separate things, and we need to be careful that they are.

The Chair: I have to be very careful with the time. We're trying to get one more questioner in before we have to leave for votes.

Go ahead, Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): Thank you, Madam Chair.

[*English*]

As a proud Albertan, I am very happy to say that we pride ourselves on the steps taken to protect the environment when acquiring our natural resources. The information I am about to share is from some key facts from the Government of Canada as recently as July 2017.

For example, first, per-barrel greenhouse gas emissions have decreased as a result of technological advancements in the oil sands. They have helped to create more energy-efficient practices and to decrease GHG emissions in the oil sands. One of the most important mechanisms used to achieve this is cogeneration, a process where steam and electricity are produced simultaneously. By converting energy and by-product into electricity that would otherwise be waste, cogeneration has contributed significantly to the 30% decrease in per-barrel GHG emissions seen in the oil sands since 1990.

In addition, it would seem that most GHG emissions come from our cars. While GHGs are emitted in the extraction phase of the crude oil production process, most of the life-cycle emissions of fuel actually come from vehicles' tailpipes. Final combustion of gasoline emerging from your tailpipe accounts for approximately 70% to 80% of well-to-wheel life-cycle emissions. These vehicle emissions are the same, of course, regardless of the crude oil from which the gasoline is derived.

The third point would be that, specifically relevant to oil sands, tailing pond technology is improving significantly. Oil sand extraction results in the accumulation of large amounts of residual waste known as "tailings", which contain a mixture of water, clay, unrecovered bitumen and solvent, and dissolved chemicals, including some organic compounds that are toxic. These tailings are stored in large ponds similar to water dams. The water released from these ponds can be recycled and reused in oil sands processing. However, the majority remains as mud.

● (1745)

The Chair: Can we just get some relevance to the bill?

Mrs. Stephanie Kusie: It's certainly relevant, Madam Chair.

Ms. Linda Duncan: Tie it to the bill.

The Chair: I'm hoping we can get it back to that. Thank you.

Mrs. Stephanie Kusie: All oil sands land, of course, must be reclaimed. The Government of Alberta requires that companies remediate and reclaim 100% of the land after the oil sands have been extracted. Reclamation means that the land is returned to a self-sustaining ecosystem with local vegetation and wildlife, which, of course, as an Albertan, I'm very proud of, as well.

In the oil sands area, the Government of Alberta has committed to conserving and protecting more than two million hectares of habitat for native species as part of the "Lower Athabasca Regional Plan 2012-2022". In addition, there's almost 4.5 million hectares of federally protected land just north of the oil sands, a significant amount.

The fifth point is that, of course, oil sand water withdrawals are very closely monitored. The Athabasca River water management framework ensures annual withdrawals by oil sand companies never exceed 3% of the Athabasca River flow. In practice, annual withdrawals are often less than 1%.

The Chair: Ms. Kusie, can you just bring it around to the bill that we're studying? Thank you.

Mrs. Stephanie Kusie: I'm getting there, Madam Chair. Thank you so much. Certainly it is relevant. This is specifically relevant to both the environment and the oil sector, which I believe are the two cruxes of Bill C-69. It is all very relevant indeed.

In practice, annual withdrawals are often less than 1%. The framework also limits, monitors, and adjusts withdrawals from the river on a weekly basis.

Finally, point number six is that almost all water in the oil sands is, of course, recycled, so most water used in oil sands development is recycled, 80% in fact, for established mining operations, and approximately 94% for in situ recovery. However, some new water is required and comes from a variety of sources including on-site drainage, collected precipitation, rain and melt water, underground salt water, brackish—I've always liked that word, brackish—aquifers, and local watersheds such as rivers.

I would say, given these incredible improvements that have been made and have been recorded by the Government of Canada most recently as July 2017, as I said, I wonder if Mr. Hazell can still, in fact, agree with Andrew Weaver's comments cited earlier today:

> This should concern all Canadians who took the Prime Minister at his word when he said he would build a clean, forward-looking economy. That means providing targeted incentives and support programs for industries who are embracing low-carbon solutions. Instead, the Prime Minister is doubling down on a sunset industry whose expansion puts our climate targets out of reach. We need to be investing in our shared future, not subsidizing the wealth of Texas oil companies.

Mr. Hazell, are you still in agreement with the comment of Mr. Weaver, given the information that I shared with you in regard to the incredible environmental improvements that have been made in regard to oil sands development?

Thank you.

The Chair: We have one minute for the answer.

Mr. Stephen Hazell: Congratulations to the oil sands industry for reducing their per barrel emissions, but the reality is that the emissions in the oil sands industry and greenhouse gases continue to increase, and they're the largest growing source of GHG emissions in the country. It can't go on. The oil sands industry is a sunset industry. We have to figure out other ways of doing it. We have to decarbonize the economy.

That's going to be tough, and it's going to be tough in Alberta, but we have to figure out a way.

● (1750)

The Chair: You have 20 seconds.

Mrs. Stephanie Kusie: I certainly value the different petroleum products that exist, clothing—I see we're wearing it—contacts and glasses, helmets, hand lotions, ink dyes, antifreeze, perfumes, nail polish, soap, detergents, medications like aspirin, water pipes, pillows, the dishes we're eating off, phones, golf clubs, cameras and —

The Chair: Thank you very much for that exhaustive list.

I also want to thank our guests today. You've given us a lot to consider. We're able to drill down on some very specific recommendations. It's been very helpful. Thank you.

I will now end the session. The reason I'm ending it is that we have votes. There is no point in your waiting, so we will end. Thank you.

The committee is adjourned.

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